

MAINE STATE HARNESS RACING COMMISSION
MINUTES OF MEETING
JANUARY 17, 2020
GAMBLING CONTROL BOARD CONFERENCE ROOM
DEPARTMENT OF PUBLIC SAFETY
45 COMMERCE DRIVE
AUGUSTA, MAINE

Commission Members Present: Michael Timmons, William McFarland, James Kelley, Jr., Edward Kelleher, and Richard Shiers

Commission Members Absent: None.

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier, Miles Greenleaf, Jaime Wood, and Zachary Matzkin

1. Call the Meeting to Order and Introductions: Michael Timmons, Chair

2. Review and Approval of Minutes

Commissioner Kelleher made a motion to accept the minutes of July 17, 2019.

Commissioner Shiers seconded. Vote 5-0.

Review and Approval of Decision and Orders

Commissioner Timmons stated they have seven decision and orders. They are David White (2), Michael Hitchcock, Ronald Dinsmore, Russell Lanpher, Jr., Randal Smith, and Steven Wilson. Commissioner Kelleher moved to accept all the decision and orders.

Commissioner Shiers seconded. Vote 5-0.

3. Adjudicatory Hearings:

- a. RE: Request to reopen the 2020 Race Date Assignment Hearing:** The Maine Harness Horsemen's Association and the Maine Standardbred Breeders and Owners Association have requested that the Commission reopen the 2020 Race Date Award Hearing for the purpose of addressing an eleven-day period between July 30 and August 9 in which the Commission awarded 16 cards between three different licensees.

Commissioner Timmons stated he would turn it over to AAG, Guay. AAG, Guay stated that he would ask AAG, Randlett to be the hearing officer for the 2020 Race Date Assignment Hearing. Hearing Officer Randlett stated they are here this morning on a request from the Maine Harness Horsemen's Association and the Maine Standardbred Breeders and Owners Association to the Commission to reopen the 2020 Race Date Award Hearing for the purpose of addressing an eleven-day period between July 30 and August 9 in which the Commission had awarded several race dates. This is allowable under the Commission's rules to the extend that any motions for reopening can be heard before a final decision is issued. One has not been issued here. What he anticipates today is that they would initially determine whether or not there is any agreement with regard to any changes in the race date assignments resulting from this motion. If not then they would proceed to hear the actual reasons for the motion presented by the MHHA and the MSBOA and after that they would consider any opposition or response by any other party or interested person with regard to that motion and then finally the Commission members would deliberate and determine whether or not they wish to reopen the hearing with respect to race dates. Now it's his understanding that the notice of the hearing that went out indicated that there would be a motion to reopen the proceeding but there's also a

requirement that if there is going to be additional hearings held after that motion is granted if it were to be granted there needs to be notice that there's going to be actually a hearing. He doesn't know there's just a notice of the motion he doesn't think there's a motion of the actual hearing. Is that correct? AAG, Guay stated the department would intend to introduce Exhibit 31. He would move for its admission at this point rather than him describe it. Hearing Officer Randlett stated does anybody have any objection to Exhibit 31 being admitted into the record at this point. Nobody's indicating any objection. He admitted Exhibit 31 into the record. And just for the purpose of the record what this is is a notice of 2020 Race Date Hearing Opening and this is in an email dated January 7, 2020 from executive director Jennings to all parties in the harness racing licensing and race date proceedings from below, and again this is a response to the request for reopening. Hearing Officer Randlett stated he's looking at the Commission's rules Chapter 19, Section 4, subsection 10. He will just indicate for the purpose of the record that the Commission may reopen a date assignment proceeding any time prior to the final decision. That's subsection 10-A. and then there's this generic paragraph beneath that says "When a hearing is reopened under this sub-section, either before or after final decision, the Commission shall give notice, no later than 10 days prior to the hearing, to all parties to the earlier proceeding, and to the public as well if the determination of issues of substantial public interest is involved." He does think that the rules do require public be given notice if there is actually going to be a hearing upon reopening. He's looking at exhibit 31. He does think there is a valid argument that this is sufficient notice to the public that the Commission would consider a reopening and could consider the reassignment of race dates. It's a close call but he thinks unless there's any objection to any party present, he thinks they could proceed accordingly today. Attorney Katz on behalf of the horsemen's board and breeder's association stated he thinks Mr. Randlett is right. That's the section that applies. Hearing Officer Randlett asked is anybody present in the room that represents any fair or commercial track have any objection to proceeding today. They're indicating there's no objection. He would ask Mr. Jennings if the Commission received any written comments or objection prior today that would indicate there would be a concern from any fair or commercial track that reopening would go forward today. Mr. Jennings stated no. Hearing Officer Randlett stated they would go forward assuming that it does get reopened. AAG, Guay stated they do agree that it should be reopened they think there is a problem with the calendar. They support the motion to reopen. Hearing Officer Randlett asked if any other party to the proceeding that would be the fairs, any commercial tracks, any of the intervenors have anything else they want to say in response to the motion or the department's response to the motion. There are none, so what they'll do is take a moment have the Commission deliberate whether or not they wish to reopen the proceeding with respect to the race date assignments only. Commissioner Timmons asked for a motion. Commissioner Kelley stated he'd make a motion that they open the 2020 Race Date Hearing. Commissioner Kelleher seconded. Vote 5-0. Hearing Officer Randlett stated so the race date assignment part of the hearing has been reopened. He thinks again Attorney Katz this is your motion he thinks it would be appropriate for him to go first and present any evidence would be testimony that you support your motion and any proposals you might have. Attorney Katz stated he does have a couple of witnesses. Hearing Officer Randlett gave Debbie Patterson her oath. Attorney Katz stated they are going to offer Exhibit 2 which is a testimonial aid which shows a calendar for July and August of 2020 and the race dates which were tentatively awarded at the last meeting. Hearing Office Randlett stated okay, any objections to Exhibit 2 being admitted into the record. AAG, Guay stated his understanding is this

is a testimonial aid, correct. Attorney Katz stated yes. AAG, Guay stated and it's the dates that were awarded is that correct. Attorney Katz stated yes. AAG, Guay stated okay, no objection. Hearing Officer Randlett stated he's going to admit Exhibit 2 into the record. Attorney Katz stated to Ms. Patterson if she could explain each of the boxes. Attorney Katz asked to admit MHHA Exhibit 4, Proposal of 9 cards for 9 days MHHA Exhibit 5, History of June and July of 2019, and MHHA Exhibit 7, History of August of 2019. Hearing Officer Randlett admitted all 3 exhibits with no objection. Ms. Patterson gave her explanation of the exhibits. AAG, Guay asked questions of Ms. Patterson. Hearing Officer Randlett gave Don Marean his oath. Attorney Katz asked questions of Mr. Marean. Mr. Marean stated that an 8 horse fields gives a large variation of bets that you can make. This will increase the handle. AAG, Guay moved for the admission of the following exhibits. Exhibit 32 is a memorandum from October 26, 2019 from Mr. Jennings to the Commission and the subject is Race Date Award Consideration. Exhibit 33, email from Steve Cobbett of Scarborough Downs dated January 15, 2020 to Mr. Jennings regarding race dates. Exhibit 34, email from Lynwood Winslow of Northern Maine Fair dated January 15, 2020 to Mr. Jennings regarding race dates. Exhibit 35, email from Michael Hopkins of Bangor Raceway dated January 16, 2020 to Mr. Jennings regarding race dates awards. Exhibit 36, January 16, 2020 Department Calendar. There were no objections to them being admitted. Hearing Office Randlett admitted them into the record. Attorney Katz stated that the concept of let's not let a commercial track compete with a fair on the dates that those fairs are running. Is a simple one. The fairs can only run on the dates given to them. AAG, Guay stated the Commission should consider and take a look at and explore do you have the power for example to make people race on dates that they didn't apply for. You don't need to give dates to people that have asked to race. Mr. Sweeney stated to adopt the schedule that Mr. Jennings crafted with Scarborough, Bangor, and Northern Maine. Hearing Office Randlett closed the hearing. Commissioners deliberated. Commissioner Kelley moved the motion as stated by Hearing Office Randlett. Hearing Office Randlett helped with the motion. The motion would be to adopt the revised calendar as it's shown in Exhibit 36 as amended however to remove Scarborough's raced dates on August 1st and August 8th. Commissioner McFarland seconded. Vote 5-0.

- b. **RE: Kim Ireland, Complaint Number 2019 MSHRC 09.** Mr. Ireland is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Ireland is the trainer of record for the horse, "Saratoga Liz". A blood sample obtained from Saratoga Liz following the Third Race at Farmington Fair on September 17, 2019 showed an elevated level of Acepromazine.
AAG, Guay stated that he had been put on notice that Mr. Ireland was having a medical procedure, so at this point in time they need to give a continuance to Mr. Ireland.
- c. **RE: Benson Merrill, Complaint Number 2019 MSHRC 13.** Mr. Merrill is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Merrill is the trainer of record for the horse, "Made Of Iron". A blood sample obtained from Made Of Iron following the Third Race at Scarborough Downs on November 14, 2019 showed an elevated level of Phenylbutazone.
AAG, Guay opened the hearing on complaint number 2019 MSHRC 13. Mr. Merrill was representing himself. AAG, Guay qualified the Commissioners. He asked Mr. Jennings and Mr. Merrill if they had any objections up to this point. They both answered no. He asked Mr. Merrill for stipulations. Do you admit that on November 14, 2019 that you were the trainer of record for the horse, "Made of Iron?" Mr.

Merrill stated yes. AAG, Guay asked Mr. Merrill, do you admit that on November 14th that “Made of Iron” raced in the third race at Scarborough Downs. Mr. Merrill stated yes. AAG, Guay asked if he agrees that on November 14, 2019 that there was an elevated level of Phenylbutazone in the horse, “Made of Iron.” Mr. Merrill stated no. AAG, Guay stated he’s going to move to the written exhibits. Mr. Jennings do you wish to submit written exhibits at this point. Mr. Jennings stated yes. AAG, Guay identified the exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Mr. Merrill’s license application; Exhibit 3, the race program for the race date; Exhibit 4, Notice of Positive Test; Exhibit 5, HRC Sample Tag; Exhibit 6, Sample Shipment Sheet, and Exhibit 7, ULC Certificate of Analysis. Do you have any objection? Mr. Merrill stated no. AAG, Guay stated they’re admitted. The state bears the burden of proving the violation. Mr. Jennings stated just say this is a relatively standard prohibited substance case it’s a very common. There was no split sample requested in this case and so he would submit that this is a standard case in which a laboratory reporting a positive which is prima facie evidence of a violation of Chapter 11. AAG, Guay gave Mr. Merrill his oath. Mr. Merrill gave his view of what happened. AAG, Guay stated they are going to deliberate to find a violation. Then they’re briefly reopen it and you can if you’re found to be in violation you can specifically ask about the penalty. AAG, Guay stated before they get to the penalty phase, he asked Dr. Matzkin if Phenylbutazone is used therapeutically in the industry. Dr. Matzkin stated yes. AAG, Guay closed the evidence part of the hearing. He stated the Commissioners need to deliberate on whether or not there was a violation. Commissioner McFarland made a motion that a violation has occurred. Commissioner Shiers seconded. Commissioner Timmons asked for a vote. Vote 5-0. AAG, Guay stated to Mr. Merrill this is his opportunity. Mr. Merrill stated this is his first time within 15 years that there was a violation and he wasn’t aware that this could have happened. He doesn’t know if the horse didn’t eat when he feed him, and the post time was closer. AAG, Guay asked Mr. Jennings if he had a recommendation. Mr. Jennings stated the department recommends the minimum penalties so they would recommend the minimum penalty of \$500 fine and a loss of purse. AAG, Guay stated one of the options if the Commission decided is you can withhold penalty until you hear the second violation and then consolidate that. It’s completely up to you. Commissioner McFarland recommends that they hear the other violation and make a penalty decision based on that. AAG, Guay stated consolidate for the penalty. Do all the Commissioners agree to that. He saw people nodding on that. He will note for the record the notice of hearing in this case was unitary so the notice of hearing was for both dockets so the decision and order will be thus written as both dockets. At this point in time, he’s going to reopen the proceeding on complaint number 2019 MSHRC 14. Commissioners you are all qualified. Mr. Merrill is there any objections to this proceeding. Mr. Merrill stated no. AAG, Guay stated for the clarity of the record the Exhibits 1-7 are exactly identical to those there were introduced in MSHRC 13 so he’s not going to repeat that. He asked Mr. Merrill if he objects to the exhibits coming in. Mr. Merrill stated no. AAG, Guay stated like the last time he’s going to ask him a series of questions. Do you agree that you were the trainer of record for the horse, “Must be Bunny” on November 14, 2019? Mr. Merrill stated yes. AAG, Guay stated do you agree that the horse, “Must be Bunny” raced on the 4th race at Scarborough Downs on November 14th. Mr. Merrill stated yes. AAG, Guay stated do you dispute that there was an elevated level of Phenylbutazone in the horse. Do you dispute the test was wrong? Mr. Merrill stated he guesses he does because he doesn’t know how it could be that high. AAG, Guay stated alright with that they’ll open up the evidentiary part and just like the last time you both get to say things. Mr. Jennings stated it’s the same thing a different horse same day. They have

a lab result from the University of Illinois indicating an elevated level of Phenylbutazone. There was no request for a split sample; therefore, he thinks that's sufficient evidence to prove the violation of Chapter 11 prohibited substance rule. AAG, Guay stated Mr. Merrill you're under oath. Do you have any other additional details regarding this horse you'd like to tell the Commission? Mr. Merrill stated no. AAG, Guay stated any other questions. With that he's going to close the evidence on 2019 MSHRC 14 and ask that you vote on whether or not a violation occurred on that particular horse. Commissioner Timmons stated based on what you seen, read, heard, what is your wish. Commissioner Kelley made a motion that a violation had occurred. Commissioner Kelleher seconded. Vote 5-0. AAG, Guay asked Mr. Jennings what is the departments recommendation for MSHRC 14. Mr. Jennings stated he thinks the department has to be mindful to be consistent from one case to another and treating people consistently they would again go for a minimum penalty but recognize that it technically is a second violation and so they would under Chapter 17 that means a minimum penalty of \$1,000 and 15 day suspension and loss of purse. Those are both the minimums one for a first violation and one for a second. AAG, Guay stated he'll have Mr. Merrill respond. Mr. Merrill stated he knows what the rules read but that's \$6,000 in January. Commissioner McFarland stated the only one thing he would mention is the loss of purse is significant in both cases. Commissioner Timmons stated he made a motion that he return the total purse amount which is \$3,000, \$1,500 for each horse and that instead of the \$1,500 that he be fined \$1,000 and then the 15 days be waived because then if he has a chance to race somewhere else at least he can find a way to get money. It was seconded by Commissioner Kelleher. Commissioner Timmons asked if there is any other discussion on the motion that he made. There were none. Any other questions or comments about it. There were none. Commissioner Timmons asked for a vote. Vote 5-0. Commissioner Shiers made a motion that all the money be returned before April 3, 2020. Commissioner Kelley seconded. Commissioner Timmons asked for a vote. Vote 5-0. AAG, Guay closed the hearing and he'll be reducing this to a written decision and order and Mr. Merrill will have 30 days to appeal it.

- d. **RE: Benson Merrill, Complaint Number 2019 MSHRC 14.** Mr. Merrill is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Merrill is the trainer of record for the horse, "Must Be The Bunny". A blood sample obtained from Must Be The Bunny following the Fourth Race at Scarborough Downs on November 14, 2019 showed an elevated level of Phenylbutazone. See complaint number 2019 MSHRC 13.
4. **Approval of Maine Harness Horsemen's Association Annual Budget.** Title 8, Section 272-B, provides that up to 3% of the funds that are allocated to supplement purses may be paid to a statewide association of horsemen if that association prepares and approves an annual budget and submits it to the Commission. The Maine Harness Horsemen's Association has prepared and approved a 2020 budget for the Commission's consideration. Commissioner Timmons asked Debbie Patterson to come up to the table. Ms. Patterson explained the MHHA's budget to the Commissioners. She stated that their budget for 2020 is \$10,000 more than what they asked for in 2019. In 2019 they were at 1.66% and in 2020 they're looking at 2.33%. Commissioner Timmons asked for a motion. Commissioner Kelleher moved to accept. Commissioner Shiers seconded. Vote 5-0.
5. **Update/Public Input on Department Efforts to Implement a Live Racing Facility Inspection Program.** The Department will update the Commission about its efforts to

implement a live racing facility inspection program. In addition, the Department invites input from the Commission and the public relative to the scope of the inspections. Mr. Jennings stated they had to investigate how they can hire a contractor to do these inspections because they involve accessing the condition of certain structural and plumbing and electrical elements that Mr. Greenleaf and he aren't going to be able to do that, so they had a dialog with the division of procurement services you have to contract for this type of services. Mr. Jennings stated well they're all going to look at building, plumbing, and electrical code. AAG, Guay stated are you looking for maybe input from the public and the Commission as to things beyond plumbing, electrical and building codes. Mr. Jennings stated he thinks that's the question. Do you want more than that or is that all you want? Commissioner Shiers stated he wants it designated so people will know what is acceptable and what is not. Commissioner McFarland stated is the concentration with respect to this kind of inspection is it the paddock area only is that what they're talking about or are they talking about the grandstand and all the rest of the grounds that goes along with the fair. Mr. Jennings stated what they've sent out as guidance on the scoping was the paddock and the grandstands. Commissioner Kelley stated grandstands are already inspected but the paddock is not. Commissioner Timmons stated his grandstand is inspected every year before they have a fair, but the paddock is not. Mr. Sweeney stated that their grandstand facility and paddock facility are inspected on an annual basis. Mr. Jennings asked who does that inspection. Ms. Terry stated the fire department. She stated that she gave the department all of the inspection reports. AAG, Guay stated he thinks the order gives you the ability to set the scope. Ms. Patterson stated as long as it's been done. Mr. Jennings stated he thinks he has some guidance.

6. **Department Request for Commission Authorization to Expend Funds on Marketing for the 2020 Race Season.** The Commission authorized the Department to expend marketing funds during the 2017, 2018 and 2019 racing seasons. There is optimism that the recent marketing efforts are beginning to pay dividends. The Department will present a proposed budget for marketing in 2020 that seeks to increase marketing expenditures in an effort to build on the progress made to date and grow the industry. Mr. Jennings stated in the last 3 years they've been trying to ramp up marketing of the harness racing industry and so last year he came to them, and made a request to expend up to \$60,000 from the operating account and make no mistake when he does that that's then coming out of racino funds in general because we're partially funding from racino funds. Commissioner Kelley stated he thinks the statute says those funds are to promote sire stakes not necessarily the tracks and the handle. Mr. Jennings stated not the statute, the rule says to promote the program. That's a little vague as to what that means. Commissioner Shiers stated to Mr. Jennings would you have a comment on where you think they'd get the best bang for the buck. Mr. Jennings stated he personally thinks it's Facebook and he thinks the marketing research supports that. Commissioner Timmons asked when do they need to vote on this. Mr. Jennings stated now would be a good time. Commissioner Kelleher asked what was the figure. Mr. Jennings stated \$95,000. Commissioner Kelleher stated so moved. Commissioner Shiers seconded. Ms. Perkins stated she would like to speak to this issue. She thinks they've done a great job advertising and getting the horses to the races and things like that, but there's another aspect of this program that they're not touching. They're not doing enough to promote breeding. Commissioner Timmons stated they have a motion on the floor for the \$95,000. Any other comments on that. There were none. Commissioners all those in favor. Any one opposed. It's unanimous.
7. **Report on Classified Racing.** At the May 17, 2019 meeting, the Commission discussed classified racing and reaffirmed its support for conducting it during the 2019 race season. The Commission further requested that the Department provide a report on classified racing

when the season concludes. The Department will share statistics and feedback with the Commission at this time.

Mr. Jennings stated the page with the chart on the front that chart comes straight from Trackmaster. Twenty-one tracks in the country are using Trackmaster, ten in the State of Maine, so all ten venues used it to some degree. It seems to work fairly effectively in condensing the odds and making close races. Some horses definitely fell through the crack in terms of if you had a Trackmaster rating of 65 to 70 and your horse was a 65 it could run 5 straight races and be number 8 because you don't move up and down if you lose or win because it's only based on time. His goal is he wants every horse to get a paycheck because otherwise they're going to lose the horses. It does say classified racing with the approval of the Commission in Chapter 7. He thinks it worked well in getting better races. He believes they had 4 dead heats and they had some tri-factors that really paid off this year. As far as he knows they are all going to try classified racing next year, but they would like to be able to fine tune it some more so if there are any horses that fall through the cracks where okay my horse is a 65 to 70 bracket and move that around so all the horses get a paycheck.

8. Overview/Update on Prohibited Substance Testing. Miles Greenleaf will give an overview/update of the prohibited substance testing results.

Miles Greenleaf stated they did have six positives--they took care of two. Commissioner Shiers asked Mr. Greenleaf to elaborate a little bit more on that. What happened--where's Jim Dunn? Mr. Greenleaf stated his lawyer asked for a continuance which the hearing officer granted. Commissioner Shiers asked what about Dolores Basilone. Mr. Greenleaf stated she had just moved to Canada and she had asked for a continuance just because the financial hardship of just getting there and just getting back. Commissioner Shiers asked Vafiades. Mr. Greenleaf stated a medical condition. Commissioner McFarland asked about Jamie Gerard. Mr. Greenleaf stated he asked for a continuance because he was out of state. AAG, Guay stated a practical suggestion to allow consent agreements you could get those done a lot quicker because if you have an adjudicatory hearing you have to follow Title 5 and all the steps in that. If you have a consent agreement you can do that quickly. Mr. Greenleaf stated a lot would settle with a consent agreement. Commissioner Timmons asked if there is anything else under prohibited substances? Mr. Jennings stated no.

9 Other Business

None.

10. Public Comment

Commissioner Timmons stated he would like to clarify something. He doesn't have any problems when he does something wrong to be called to task on that. He's going to put Ms. Patterson on the line here to clarify something that happened. Number one he happens to live at Cumberland Fair, so it isn't hard to find him down there. Number two it was stated it came out of Scarborough after by a lady that went back to Scarborough after they were at Cumberland and the story finally came out that Mike Timmons arranged a large group of horse people to go down there and to bad mouth Scarborough and on and on. He would like to ask Ms. Patterson what role it is that Mike Timmons played in any meeting with 89 or 90 people. Could you expand on that please for him? Ms. Patterson stated that she never talked to him at all about it. She received a phone call from Mike Cushing basically saying could you put on Facebook that there's going to be a meeting the date and the time and where it was going to be, and he had just talked to Jason Vafiades and Mike Cianchette was wanting to have a meeting with the horsemen. Commissioner Timmons stated not Mike Timmons but Mike Cianchette. Ms. Patterson stated no. Commissioner Timmons stated so you people arranged it. Ms. Patterson stated yeah it was pretty much at that point. She always takes things over anyways. At that point when she got the phone call, she did post it and then she

was the one that brought the refreshments and stuff like that for the horsemen. Commissioner Timmons stated that he got a phone call from Ms. Patterson the morning that they were coming there and because it was that many people he simply did a nice thing and went and got a broom because they were using the paddock that they wanted to use and he swept that paddock floor and he got video in some of his tactics which put him in a bad light and his final comment was in his 50 years and most of it being at Cumberland he had one goal and he still has that and that is to do everything he can to keep harness racing and keep it alive.

11. Schedule of Future Meetings:

February 21, 2020

12. Adjourn

3:05 p.m.